

REMARKS

Entry of the amendment is respectfully requested since it should reduce the issues on appeal. Claim 1 has been amended to include the subject matter of claim 5.

Upon entry of the amendment, claims 1-3 are pending in the application.

Reconsideration is respectfully requested in light of the remarks that follow.

The Examiner is again requested to hold in abeyance the requirement that the specification be amended to more clearly identify the presence of Trademarks and to include generic terminology. This will be done upon an indication of allowable subject matter.

Claims 1-3 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as his invention.

With regard to “highly dispersed,” it is a “term of art” and appears in the claims of at least 344 patents. The specification indicates that “highly dispersed silicon dioxide is also called pyrogenic silica. See last paragraph on page 1 of the specification. Further, US 6,441,078 refers to finely divided silica and indicates that “The expression “*finely divided silicic acid*” means *highly dispersed silica*.” (See col. 4, lines 35-6) Also, US 3,956,106 (silica), US 4,022,152 (silica) and US 4,028,218 (alumina and/or silica), directed to preparatory methods for “finely dispersed” particles. There is no mention of a range. It would appear that the term objected to as indefinite would be understood by those in the art with specifying a range.

“DIN 55943” is a recognized German standard and appears in at least 28 US patents, e.g. US 7,001,437, US 6,495,079 and US 6,613,137. It also appears in the reference relied upon by the Examiner in the anticipation rejection employs the term. If the Examiner can access the teaching of the reference to be anticipatory, the term must be understood.

Withdrawal of the rejection is respectfully requested in light of the comments provided herein.

Claims 1-3 and 5 are rejected under 35 U.S.C. 102(e) as anticipated by Hasenzahl et al. (US 20020197311). Applicants respectfully traverse.

For a reference to be anticipatory, it must teach each and every element required by the claims. There is no express anticipation. Here, the Examiner appears to be of the opinion that there is inherent anticipation of the claimed composition. The characteristic “silicon dioxide contains a maximum of 3.0 wt.% of water-wettable contents” is not taught, however. There is no detailed preparatory method, which would allow one to access if the claimed product would be inherently produced. No explanation is provided in the Office Action which explains why the identified property would be inherently present. The instant specification shows that tamped density and amount of silane coating are critical factors in achieving the claimed product. Note comparative examples and tables. More than a general teaching as that provided in paragraph [0025] is required to suggest the inherent presence of the claimed product.

Paragraph [0025] of the Hasenzahl et al. patent merely mentions the use of surface modifying reagents. There is no detailed description of the preparatory process like those present in the instant specification. No coated products like those employed by Applicants, e.g., Aerosil® R812 and R 972 are named.

The “comparative products” described on page 24 of the instant specification starting at line 20 are prepared with ten percent less dimethyldichlorosilane to illustrate the criticality of this parameter. The lesser amount leads to two to three fold differences in the water wettable contents (%) values for the compared products. See Table 6.

The process as described in paragraph [0025] does not provide one with the necessary guidance/detail to make it reasonably certain that the claimed product is prepared and recovered. Specific concentrations of the surface modifying agent are required to achieve the claimed water wettable contents (%) values. These values are not taught or suggested.

In light of the above, it is not seen why the burden of going forward would be shifted to Applicants. The Examiner has not met her burden. The process taught by the reference lacks the

detail to permit Applicants the opportunity to experimentally establish product differences.

Paragraph [0025] is merely a general description of a technique.

Request for Interview

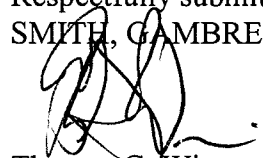
Applicants respectfully request either a telephonic or an in-person interview should there be any remaining issues.

CONCLUSION

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Therefore, it is respectfully requested that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, in the event that additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. 1.136(a), and any fees required therefore are hereby authorized to be charged to **Deposit Account No. 02-4300, Attorney Docket No. 39509-213934.**

Respectfully submitted,
SMITH, GAMBRELL & RUSSELL, LLP



Thomas G. Wiseman
Reg. No.35,046

Date: November 11, 2008

1130 Connecticut Ave., NW, #1130
Washington, D.C. 20036
Telephone: (202) 263-4300
Facsimile: (202) 263-4329